



# TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

## **Board of Ethics**

Peter Tesei, 1<sup>st</sup> Selectman, Ex Officio Member  
Paul A. deBary, Chairman  
Rev. Ian Jeremiah, Secretary  
Robert V. Sisca, Member  
Robert F. Grele, Member  
John Margenot, Member

## **Annual Report of the Board of Ethics**

### **Fiscal Year 2017-2018**

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2018. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting by Section 2.12 (c) of the Greenwich Code of Ethics.

### **Executive Summary**

There was one request for an advisory opinion and one a complaint filed with the Board of Ethics during the 2017-2018 Fiscal Year. The Board approved the requested advisory opinion at its most recent meeting. A copy is attached as Exhibit A. The complaint was dated June 15<sup>th</sup> and is currently under review.

The Board also continued to address a request for an advisory opinion on behalf of the Commission on Aging that was submitted during the previous fiscal year. One opinion related to this request was issued during the 2017-2018 Fiscal Year. A copy of this advisory opinion is attached as Exhibit B. Another advisory opinion related to this request is still under review.

During the 2017-2018 Fiscal Year, six Town Officers filed nine financial disclosure forms to disclose financial interests in a Town transaction. Three of these were not notarized. In addition, twenty-seven Town Officers filed disclosure forms indicating that they had nothing to disclose. These twenty-seven filings are not required by the Code of Ethics and the number received is significantly higher than last year.

In the last few years, there had been a significant improvement in the accuracy and completeness of the reports that were filed, as well as a significant decrease in

unnecessary filings. The renewed increase in unnecessary filings reinforces the Board's concern that the Town's current ethics reporting system is not well understood by many Town Officers. The fact that most of the unnecessary filings were not notarized also suggests that some individuals may simply consider the filing requirement too burdensome to comply with.

The Board has approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line filing system. This draft has been submitted to the 1<sup>st</sup> Selectman and the Town Attorney for consideration and review. The Board is encouraged by the serious consideration being shown to this proposal.

The Board has benefited from the continuation of budgeted funds to support its operations. For several years, the Board has been pleased to receive a standby allocation of funds. This budgetary allowance is intended to cover costs that might be necessary in connection with the preliminary investigation of a complaint, should the need arise. Although the Board did not require the use of such funds this year, the existence of this budget allocation serves as an important indication that the work of the Board will be supported as necessary. We believe that an increase in this budget allocation would provide further evidence to Town Officers and the public at large that the Board has the necessary means at its disposal to properly address any serious complaint it might receive.

## **Complaints of Violations of the Code**

There was one complaint filed with the Board of Ethics during the 2017-2018 Fiscal Year. The complaint was received on June 15<sup>th</sup>. A preliminary investigation of this complaint is continuing.

The Board has adopted a Statement of Procedures that describes the process by which complaints should be submitted to the Board. Because individuals are often unclear about, or omit, essential facts, the Statement of Procedures recommends that complainants identify themselves. This makes it easier for the Board to obtain any additional information that may be necessary in order to determine whether a preliminary investigation of the matter should be commenced.

Where a person makes an informal report to a member of the Board, it is our practice to respond by referring the individual to the provisions of the Code that might apply to the subject matter of their inquiry and describing the procedures for filing a formal complaint, if appropriate. However, the Board also occasionally receives anonymous reports. The Code of Ethics doesn't require complaints to be submitted in any particular form or that complainants need to identify themselves. As a result, where anonymous reports are addressed to the Board as a whole, the Board considers it best to review the communication carefully. The purpose of this review is to make a determination as to whether the communication contains information that could serve as

the basis for a complaint, even though the communication isn't expressly identified as such.

If the Board finds no basis for believing that a violation of the Code may have occurred after carefully considering at face value any allegations made in such a submission, it makes a determination that the requirements of its Statement of Procedures should not be waived and that the submission should not be treated as a complaint. Where such a basis is found, the Board may determine in appropriate circumstances that the requirements of its Statement of Procedures should be waived in the interest of better serving the purposes of the Code. Following such a determination, the Board will commence a preliminary investigation to determine if there is probable cause to believe that a violation has in fact actually occurred notwithstanding any anomalies in the method by which the complaint has been submitted.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the low incidence of complaints is indicative of a high level of ethical behavior in Town government.

## **Requests for Advisory Opinions**

The Board of Ethics received one advisory opinion request during the 2017-2018 Fiscal Year. This request was made by the director of a Town Department. It asked for guidance concerning service on the client advisory board of a vendor of services to the Town. The position was unpaid and the director believed that service on the advisory board would allow the director to benefit from contact with other members of the board that had responsibilities to government entities similar to the director's duties to the Town. The Board reviewed the terms and conditions under which it felt participation on the Board would be consistent with the Code of Ethics and those under which it felt it would not. A copy of this opinion is attached as Exhibit A.

The Board also provided an opinion during the 2017-2018 Fiscal Year in response to a request that was received in a prior year. This opinion dealt with the issue of whether members of an advisory board to be created in connection with a WHO/AARP initiative would be subject to the Code of Ethics. The Board indicated that, consistent with prior opinions, members appointed to serve on an entity created by Town action and supported by Town funds are subject to the Code of Ethics. A copy of this advisory opinion is attached as Exhibit B.

As in prior years, members of the Board individually and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

## Annual Disclosure Statements

*Review of Filings.* As of July 30, 2018, five Town Officers filed eight annual disclosure reports with the Town Clerk covering the 2017-2018 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	3	1	2	6
Not Compliant	<u>28</u>	<u>0</u>	<u>1</u>	<u>29</u>
<b>Total</b>	<b>31</b>	<b>1</b>	<b>2</b>	<b>35*</b>

\* 33 individuals reported, two of whom filed multiple reports.

After declining for several years due to the elimination of unnecessary filings (i.e. those in which the filer indicates that he or she has no interest to declare), there was a significant increase in the number of reporting persons during the 2017-2018 Fiscal Year. There was a large increase in unnecessary filings and also a significant number of non-notarized filings. Of the thirty-five forms filed with the Town Clerk, only six were fully compliant with the Code. On a brighter note, the Board has noted improvements in the details given in the compliant filings that are being made.

The very low number of fully compliant forms filed in recent years, however, suggests that additional training is necessary to ensure that all Town Officers are aware when they have an obligation to file. A review of the statements that are filed doesn't allow the Board to judge with any certainty the degree of overall compliance with the Town's financial disclosure requirements. Clearly, however, with several thousand Town employees and elected and appointed officials covered by the requirements of the Code, it seems likely that more than six will have a financial interest in a Town transaction during a fiscal year.

The Board has questioned for several years whether the reporting system itself may be part of the problem and a more user-friendly reporting system might result in improved reporting. It is likely that the current system seems unduly burdensome to many Town Officers, particularly if they are accustomed to using on-line systems to file other reports or engage in related activities. In addition to the requirement that disclosure statements be notarized, reports are currently only permitted to be filed at the end of the year —up to thirteen months after the transaction being reported on may have occurred.<sup>1</sup> These requirements may serve as significant disincentives for reporting, especially when

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<sup>1</sup> Town Officers are thus required to keep track of all financial interests that they may have in Town transactions throughout the fiscal year in order to report on them after the close of the fiscal year, which can require record keeping and reporting on transactions that are over a year old at the time the filing is made.

the individual may not have convenient access to a notary or the information needed to complete the form may not be readily available at the time he or she is required to make the filing. When the interest being reported (or the likelihood that nondisclosure will be noticed) seems small, some may consider that they will be better off not filing a statement rather than take the risk that they will be held responsible for making an inaccurate statement under oath. As a result, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

*Recommended Changes.* Recently, the Chair of the Board met with the Town Attorney to discuss draft amendments the Code of Ethics to provide for an on-line system of reporting that would allow for filings when an interest arises, rather than at the end of the fiscal year, and eliminate the burdensome and unnecessary requirement that filings be notarized. The Board feels that the adoption of an on-line disclosure system that does not involve notarized statements will improve, rather than degrade, the efficacy of the Town's ethics disclosures and that a system of reporting that provides for disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, will be a more efficacious system for all concerned. We believe that this would be both easier for Town Officers to comply with and provide more timely and useful information to the public.

## **Plans and Recommendations**

*Continuing Initiatives.* Adjudicating complaints is clearly not the Board's preferred way to help Town Officers gain a better understanding the Code. We are anxious to have Town Officers, as well as the general public, fully understand the who, why, what, where and when of the disclosure process, as well as the other ways in which the provisions of the Code affect them. Toward that end, we will continue to provide reminders and reports and maintain current information about the Code and the operations of the Board of Ethics on the Town website during the 2018-2019 Fiscal Year.

The Board will also continue to serve as a resource for information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to assist in training Town Officers.

The Board also expects to complete its work with the Commission on Aging to respond to issues raised in an advisory opinion request by Chair and Vice-Chair on behalf of the Commission. We believe that guidance on the issues raised in the request will also be useful for other Town departments, boards and commissions.

If and when technical amendments are made to the Code of Ethics to provide for an on-line disclosure reporting system, the Board will also stand ready to begin the process of implementing such a system.

*Recommendations.* Following a review of its activities and experiences in the 2017-2018 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

**1. Adopt Technical Amendments to the Code of Ethics to Modernize the Town's Financial Disclosure Reporting System.** As discussed above, the Board believes that that requiring disclosure of financial interest is an essential aspect of the Town's ethics policy, but that the current system is outdated and difficult to comply with. However, a change from an annual paper-based reporting system to a contemporaneous on-line reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. The Board has proposed a draft of such technical amendments and reviewed these with the Town Attorney. We would be happy to further assist the Selectmen and the RTM with the process of implementing these amendments.

**2. Continue Training Efforts.** Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to provide training for elected and appointed Town officers with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements. Members of the Board are available to meet with groups of elected and appointed officials who would like to receive additional information concerning the annual disclosure requirement or provide whatever other assistance may be appropriate.

**3. Increase the Board's Budget for Investigative Expenses.** The Code of Ethics requires the Board to investigate any complaint it receives, but until recently there were no funds budgeted to cover any expenses that might be incurred in conducting such investigations. Under the Board's procedures, and as provided by state law, the Board is required to conduct its preliminary investigation (to determine whether there are grounds for a further investigation) on a confidential basis. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of reducing the quality of the investigation by spending less, or compromising its confidentiality by requesting additional funds. The Board is pleased to have received an allocation of funds for 2017-2018. These funds proved to be unnecessary and were not be used. However, the amount allocated was less than the amount that the Board considers advisable to ensure that it can conduct a proper preliminary investigation should the need arise. Therefore, it requests a larger set-a-side of funds for this purpose in the coming fiscal year.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

**September 11, 2018**

## **Exhibit A**

### **Advisory Opinion No. 19-01**

**Date:** 9/11/2018

**Topics:** Favor, Financial Interest, Gifts, Vendors

**Code Section:** Section 3

#### **Statement of Facts:**

The director of a Town department has been asked to serve on the “client advisory board” of a Town vendor.

The vendor provides products and services designed for municipal clients. Its website describes its client advisory board as “a collaborative, strategic forum of industry partners to gather input and insights into the technology trends and emerging needs of public sector entities.” It describes the members of the board as “national leaders and innovative thinkers in public sector technology from a variety of municipal cities and counties” and lists the members with their bios. Current members of the board include officials from counties in Arizona, Colorado and Texas, from cities in New York and Rhode Island and from the State of Washington. The director has been advised that the vendor’s goal is to have a ten member board with representatives that reflect a broad geographic cross section of clients.

Service on the advisory board is expected to be unpaid and involve participating in monthly telephone calls at which matters related to the vendor’s service area will be discussed among members of the advisory board, representatives of the company and various experts that the vendor may arrange to participate.

Participation on the advisory board is also expected to involve attendance at two in-person conferences of several days duration each year. In the past, these meetings have been held at the vendor’s headquarters in Manhattan, Kansas, which (although a charming university town) is not generally known as a tourist destination. However, the most recent meeting was held in Buffalo, New York, the location of a member of the advisory board. Thus meetings may be expected to occur at various locations, but the locations are not expected to be tourist destinations and the estimated travel cost of these meetings is not expected to exceed \$2,000 each.

The vendor in question was recently awarded a significant technology contract by the Town, which the director has primary responsibility for overseeing. The contract was awarded under Section 5.4 of the Town’s Purchasing Policy, which

permits Departments to enter into contracts for services that have been bid out by non-profits or other governmental units, as long as the contract has the same terms and otherwise meets the standard requirements for Town contracts. The director was not familiar with vendor prior to the procurement process and was not approached about serving on the advisory board until four months after the contract was awarded. The initial contract expired on July 1, 2018 and has been extended for a year. For purposes of this opinion, it is assumed that the director may continue to serve on the advisory board at the time that the next decision to replace or renew the vendor is made.

Part of the director's oversight role will be to approve payments to the vendor aggregating approximately \$20,000 per year. In addition, the vendor provides additional services that may be contracted for by other Town Departments. Some of these services may be directly related to the existing contract (such as training in the use of the product under contract). Others may not be directly related to the contract, but may still relate to services that the director would be expected to assist the Town in evaluating and/or implementing. Therefore, the director sees participation in the vendor's advisory board as useful in making better use of the services the Town has already contracted for and also in developing an understanding of services that may be useful to other Town departments, whether those services are provided by the vendor or not.

In addition, the director feels that participation in the advisory board would be beneficial to the Town in several other ways. To begin with, it would provide the director with a structured way of interfacing with individuals who have similar responsibilities at other municipalities. This would not only allow the director to gain insights from their shared experience as it relates to the vendor's products and performance, but also broader issues that are faced municipal officials in positions similar to the director. Since the director would undoubtedly form some level of social connection with these individuals in the context of the advisory board's meetings, it seems likely that these contacts would also be able to provide perspectives on shared issues unrelated to the vendor's services and in contexts unrelated to their mutual service on the advisory board. Therefore, the director feels that such relationships could be of value to the Town by growing a network of contacts that could be helpful even beyond the activities of the advisory board.

Also, it is in the nature of technology services today that they evolve rapidly. Only a small percentage of the vendor's many municipal clients are represented on the advisory board. The director feels that participating in the advisory board would provide Greenwich with privileged access to the vendor's product development process, improving the chances that product upgrades would be beneficial rather than problematical to the Town.

The director is aware that participation in the client advisory board may affect the director's perception of the vendor's products and services: "The content of the meetings might indeed influence my opinion about whether the [*vendor's service*]



remains a viable solution for the Town...” However, the director does not believe that this influence will be the result of a valuable gift or favor: “...that influence would be based solely on the merits [*of the product*], rather than for personal gain.”

The director also believes that service on the Board would be consistent with the director’s job description, which includes “*working with internal and external professionals and consultants to analyze requirements and develop new...systems and services.*” In this sense, the director feels that it might be considered part of the director’s duties to serve on the advisory board “as long as doing so offers a clear benefit to the Town, is done transparently, and would not involve acceptance of any type of compensation from the vendor for attending.”

Although service on the advisory board is unpaid, it can be expected that there will be expenses incurred in connection with serving on the advisory board. The director has discussed the advisory position with the Town Administrator and believes that the benefits of participation in the board would justify the Town in paying the cost of air transportation, meals and lodging in connection with attending the meetings of the board. It can be assumed, however, that certain expenses associated with the meetings themselves, such as local transportation, pads and pencils, refreshments during the meetings and modest meals just before, in between or just after the meetings, may be covered by the vendor. The director has assured the Board, however, that “I would under no circumstances accept from the vendor any type of compensation for attending, such as gift cards, expensive theatre tickets, golf outings or other such entertainment.”

### **Relevant Code Provision:**

**Section 3. GIFTS AND FAVORS.** No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.

### **Question Presented:**

Could the acceptance of a position on the client advisory board result in receipt of a “valuable gift, thing or favor” within the meaning of the Code of Ethics that might “tend to influence the performance or non-performance of the director’s official duties” in supervising the vendor’s contract?

### **Discussion and Conclusion:**

The Board of Ethics has considered invitations to Town Officers to participate in programs or events sponsored by vendors in two prior advisory opinions. In Advisory Opinion No. 04-02, a manufacturer invited a Town Officer in January to attend a “product review” in “the sunny Palm Desert”. The invitation stated that it was made “as promised” and that all travel and related expenses would be paid by

the manufacturer. The Board recommended that the Town Officer decline the invitation, noting that:

“Particularly in the case of travel to remote resort locations, there is a possibility that the vendor is covering the cost with the expectation that the Town Officer will consider the opportunity to attend the event as a favor that might influence the performance of his or her official duties.”

Similarly, in Advisory Opinion No. 06-04, the Board indicated that an all-expenses paid invitation to attend a conference in Florida could be seen as a “potential gift or favor”, but indicated that the Town Officer could attend the conference as long as the vendor was not doing business with the Town and was not expected to do business with the Town in the future. It cautioned, however, that the Town Officer’s behavior would be subject to strict scrutiny if the vendor were ever to do business with the Town.

In both of these prior opinions, the vendor involved seems to have been singularly unconcerned with the appearance of undue influence. The meetings were not held in a businesslike setting, but in a resort environment. Nor was the Town expected to have to weigh the benefit to the public against the direct expenditure of public funds. If there was a benefit, therefore, it was clearly to the vendor.

By contrast, in the case of the current request the vendor appears to be sensitive to these concerns. The advisory board is given a mission “to gather input and insights into the technology trends and emerging needs of public sector entities” which is consistent with the interest of the clients as much as the vendor. Participants are expected to have substantial participation from their own workplaces through conference calls. In addition, the locations chosen for the physical meetings appear more logical for the accomplishment of work related objectives than the pursuit of pleasure.

There are clearly elements of the director’s participation in the advisory board that could be seen as favorable to the director. It may provide the director with visibility and professional recognition through the opportunity to network with other professionals. It also offers the director the opportunity to travel at public expense. There are also some expenses that may be expected to be borne by the vendor, such as local transportation to and from working sessions, snacks and refreshments such as coffee, tea, juice and water during meetings and meals served during breaks or otherwise close in time and place to the business activities being conducted. If appropriate discretion is used, however, the Board does not believe that such emoluments should inappropriately influence the director’s job performance.

Although it is not necessarily a day-to-day experience, one would hope that, on occasion, persons who toil in the public interest will find themselves involved in pleasurable or career advancing tasks. Incidental benefit to a public servant is not necessarily harmful to the public interest when it is an ordinary consequence of a

job well done. Thus, the Code of Ethics does not impose an absolute prohibition on the receipt of gifts and favors that are incidental to the performance of official duties. It only prohibits them if they have the potential to influence that performance in a way that places the individual's interest ahead of the public. Where the predominant expense of participation a program or event is approved by a supervisor and paid for by the Town, the Board may presume that the Town Officer's participation is a normal and beneficial part of the Town Officer's job.

This presumption is not absolute, however, and could be put aside in circumstances where the benefit to the Town Officer is clearly disproportional to the public interest or targeted in time and place so as to influence the performance or non-performance of specific official duties. If the director's participation were to involve any of the following, the Board would not be inclined to consider the personal benefit to be inconsequential:

1. Expenses for non-local transportation, such as:
  - a. long distance transport by air, sea or train, or
  - b. use of a rental car or company vehicle for an extended period of time.
2. Meals that are excessively lavish or time consuming.
3. Expenses related to entertainments, such as participation in or attendance at theatre productions or sporting events, such as golf outings, ski passes, races, major league sports or other professional competitions.
4. Drinks and other refreshments or entertainments at an offsite location such as a bar or nightclub.
5. Valuable mementoes such as apparel, glassware, artwork or sports equipment or memorabilia.

Since the director has expressly mentioned this type of possibility, we have assumed that such items will be avoided.

There are also elements of participation in the client advisory board that might influence the director's performance or non-performance of official duties by taking time away from them. While participation on the advisory board could help the director to find new approaches to Town problems or see the need for a change strategic direction, it could also provide a means of deepening personal ties between director and the vendor's representatives, which could cause the director to recommend the use of more services by the Town. Clearly these are issues that the director will need to be sensitive to, but they are issues that public officials are required to deal with on a day-to-day basis and continue to maintain their objectivity.

If the director accepts a position on the vendor's client advisory board, the Board of Ethics would expect the director to follow appropriate procedures in documenting the benefits of the position to the Town, consistent with the good practice of seeking this advisory opinion. The director could submit a written memo to the Town

Administrator prior to attending any out of town meetings, describing the purpose of the travel and including relevant agenda materials, and/or could include a summary of the benefits of attending the meetings in connection with travel reimbursement requests.

The Board would also expect the director to provide written communications to relevant parties describing ways in which the director's telephonic and in person meetings as a member of the advisory board provided insights into how the Town's operations might be improved. These insights might also be summarized in any self-assessment or notes prepared in connection with performance reviews. Sensitivity in reporting back to staff, other directors, the Town Administrator and the 1<sup>st</sup> Selectman about the insights gathered through participation in the advisory board will be important, not only in avoiding the appearance of impropriety, but also in making judgements as to whether continued participation in the advisory board's activities is worth the cost to the Town in time and expense.

The director should also provide a copy of this opinion to the vendor in order to ensure that all parties have consistent expectations.

**See Related: A 04-02, A 06-04**

## **Exhibit B**

### **Advisory Opinion No. 2018 – 01**

**Date:** September 12, 2017

**Topics:** Town Officers; Advisory Boards and Committees

**Code Sections:** Sections 2 (a) (3), Section 5

#### **Statement of Facts:**

The Commission on Aging is participating in a program established by the American Association of Retired Persons (AARP) under the auspices of the World Health Organization. This program is identified as the Age Friendly Communities Program and its purpose is to serve as a catalyst to educate, encourage, promote, and recognize improvements that make cities, towns, and counties more supportive not only of their older residents but for residents of all ages. Under the program, the Commission has applied to have Greenwich designated as the first Connecticut community to join the Program's Network of Age-Friendly Communities.

As a part of the first phase of the program, the Commission is collecting data for a baseline assessment of age-friendliness of the Community. This will serve as a basis for a three-year action plan to be recommended to the Town for implementation. The program requirements stipulate that an advisory committee and possible subcommittees be established to assist the Commission in making the assessment and developing the action plan. The advisory panel is required to include representatives of Town Government as well as major non-profit and private institutional service providers and constituent groups. It is the clear intention of the program that persons with personal interests, including economic interests, in the development plan be included in the advisory committee.

In order to properly advise members of the advisory committee and any subcommittees which may be established of their responsibilities under the program, the Commission has requested the Board to issue an advisory opinion with respect to the application of the Code of Ethics to the members of the advisory committee and any such subcommittees.

#### **Questions Presented:**

Will members of the advisory committee and any subcommittees be Town Officers for purposes of the Code of Ethics?

## **Discussion and Conclusions:**

This request concerns the definition of Town Officer Section 2 (a) (3) of the Code of Ethics, which reads as follows:

“Town officer shall mean and include any official, employee, agent, consultant or member, elected or appointed, of any board, department, commission, committee, legislative body or other agency of the town.”

It must be noted that the definition of Town Officer contained in Section 2 of the Code was intended to apply only for purposes of the Code and was not intended to apply for purposes of other Town classifications. This is made clear by the RTM’s specific inclusion of consultants and agents in addition to officials, employees and other elected and appointed officials. In this regard, the Board must consider whether the advisory committee is a committee or other agency “of the Town”.

What constitutes a committee or subcommittee or other agency of the Town has rarely been specifically addressed by the Board. Certainly, the fact that the members of the committee are to be selected by members of a commission that act as part of a Town department suggest that the committee will be a Town Committee. It is also clear that the Committee has been designed to speak for the Town, although not necessarily the Town government. However, most of the committees and agencies of the Town that the Board deals with appoint members under a process that is more formal, involving nominations by the Selectmen and approvals by the RTM. Other, less formal committees have established from time to time, but the application of the Code to such committees has never been the subject of a complaint or a request for an Advisory Opinion of the Board.

In this case, the Board believes that the advisory committee established by the Commission on Aging should be considered a committee of the Town because it is being created by a Town department as part of a formal effort to obtain consultative advice. The intention of the RTM to include consultants within the purview of the Code is clear. Whether they serve on a paid or unpaid basis seems immaterial.

Although the recommendations of the advisory committee and any subcommittees will not be directly translated into Town policies, the formal structure of the program ensures that the recommendations of the committee will have a formal role in the development of an action plan for the Town. The Board of Ethics has been consistent in considering formal advisory matters to be covered by the Code of Ethics.

In Advisory Opinion 98-02, a member of the Historic District Commission served as an architectural consultant for a real estate company and was asked to appear on a client’s behalf before the Commission regarding an application for a designation as an Historic Overlay Zone in connection with the renovation of a building owned by the client. The member did not appear before the commission as a registered agent for the company, but provided detail to the Commission as to architectural detail and historical background. The Commission didn’t itself approve the designation, but served in an advisory capacity to the Planning and Zoning Commission.

While the Board encouraged the member in Advisory Opinion 98-02 to give the Commission the benefit of the member's professional expertise, it found it acceptable only to the extent that the member was "recused from participation in review of the application and all discussion and votes thereon by the Commission". Specifically, the Board found no reason to distinguish the situation from other Town actions simply because the Commission's recommendations were only made in an advisory capacity to the Planning and Zoning Commission:

"In this case, the action to be taken by the Town is the recommendation of the Historical Commission, not the designation by the Planning and Zoning Commission."

Similarly, in Statement 95-01, the Board considered whether a favor received by a Town Officer who was not "directly in the decision-making chain with regard to the duties to be performed" could result in a violation of the Code and commented that it could be considered a gift or favor for purposes of the Code. It is also noted that the Connecticut Freedom of Information Commission recently confirmed its 1988 decision that Greenwich Emergency Medical Services was covered by the State Freedom of Information Act because it had been created by Town action and was supported by Town funds. This is consistent with the Board's decision in Advisory Opinion 96-01.

Accordingly, the Board finds that members of the advisory committee being established by the Commission on Aging as part of its Age-Friendly Communities initiative will be subject to the Code of Ethics. The Commission should inform the members of the committee and any subcommittee that they are subject to provisions of the Code with regard to gifts, favors and financial interests, including the reporting requirements of Section 5 of the Code.

The Board recognizes that the nature of the committee is such that members will in many cases be selected because of their interest in the matters being dealt with by the Committee. This is not entirely unusual for Town committees and is a reason for persons to serve, not to avoid service, as the Board has stressed on many occasions. The Board has addressed issues related to this on previous occasions and expects to address these issues further when it responds to other questions raised in the Commission's request, which are currently under advisement.

**See Related: A98-02, S95-01, A96-01**